

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.876 & 877 of 2007

Commissioner of Income Tax Chennai. Appellant in both appeals

Vs.

M/s. TVS Lean Logistics Ltd.
7B, West Veli Street Madurai 625 001. Respondent in both appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 31.10.2006 in ITA Nos.2692 & 2693/Mds/2005 for the assessment years 2001-02 and 2002-03 against the order of the Commissioner of Income Tax (Appeals I) Madurai dated 21.9.2005 in ITA NO. 40 and 243/2004-05 for the Assessment year 2001-02 and 2002-03 respectively and assessment order in PA NO. AABCT 2536Q DATED 29.3.2004 and 7.2.2005.

For Appellant : Mrs.Pushya Sitaraman, Sr.S.C.

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The Revenue has preferred these appeals on a vexed substantial question of law as to whether the expenditure on construction of building in a leasehold premises would amount to revenue expenditure, contrary to the clear provisions of Explanation 1 to Section 32(1) of the Income Tax Act, under the following facts and circumstances of the case.

2.1. The relevant assessment years are 2001-02 and 2002-03 respectively. The assessee claimed the expenditure incurred by it on construction of a building, concededly on leasehold land, as

revenue in nature. But, the Assessing Officer treated it as capital expenditure by orders dated 23.3.2004 and 7.2.2005 respectively. Against the said orders, the assessee preferred appeals, which were, by common order dated 21.9.2005 dismissed by the Commissioner, upholding the order of the Assessing Officer.

2.2. Contending that Explanation 1 to Section 32(1) of the Act would cover the situations of construction on premises taken on lease, since the assessee was not the owner of the building, the expenditure could only be treated as revenue in nature, the assessee preferred further appeals before the Tribunal. Appreciating the contention made on behalf of the assessee, the Tribunal allowed the appeal and held that the expenditure incurred by the assessee on the construction of the building on the leasehold land was not attracted by Explanation 1 to Section 32(1) of the Act, as it was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 1.4.1988 and therefore, the said expenditure was revenue in nature. Hence, the present appeal raising the above mentioned substantial question of law.

3. Before proceeding further, it is apt to refer Explanation 1 of Section 32(1) of the Act.

"32. Depreciation

(1) In respect of depreciation of -

- (i) buildings, machinery, plant or furniture, being tangible assets;
- (ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed -

- (i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;
- (ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

...

Explanation 1 - Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is

incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.

... "

4.1. It is not in dispute that the assessee had put up the impugned construction of building only on the leasehold land and no building was taken on lease by the assessee. Therefore, the fiction created by Explanation 1 that the building put up by him in the leasehold land or structure or work shall be construed as if the same is owned by the assessee, is not applicable to the case of the assessee and the Explanation 1 to Section 32(1) of the Act is not attracted to the instant case of the assessee at all.

4.2. Of course, an argument was advanced on behalf of the Revenue that the words "where the business or profession is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy" would also include lands and would be read as "where the business or profession of the assessee is carried on in a land not owned by him but in respect of which the assessee holds a lease or other right of occupancy" and in such case, explanation 1 to Section 32 (1) of the Act is squarely applicable to the instant case of the assessee. But, we are unable to appreciate the said argument. In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom; and it is well known that the Court can iron out the creases but it cannot change the texture of the fabric, cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous, cannot add or subtract words to a statute or read something into it which is not there and cannot rewrite or recast legislation, vide *NASIRUDDIN v. SITA RAM AGARWAL* [2003] 2 SCC 577.

4.3. Similarly, there should be a literal rule of interpretation of a statute, which is the first and foremost principle of interpretation and where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule and even if the literal interpretation results in hardship or inconvenience, it has to be followed. The language employed in a statute is the determinative factor of the legislative event and even assuming there is a defect or any omission in the words used in the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result and any departure from the literal rule would

really be amending the law in the garb of interpretation, which is not permissible and which would be destructive of judicial discipline, vide RAGHUNATH RAI BAREJA v. PUNJAB NATIONAL BANK [2007] 2 SCC 230.

4.4. What constitutes a capital expenditure and what does not, to attract Explanation 1 to Section 32(1) of the Act depends upon the construction of any structure or doing any work or in relation to and by way of renovation, extension or improvement to the building which is put up in a building taken on lease by him for carrying on his business and profession of the assessee, but not in a case of construction of any structure or doing any work or relation to where such building is put up/constructed for the purpose of business or the profession of the assessee in a land taken on lease by the assessee. Because the assessee did not acquire a capital asset, viz. the land in the instant case, but have put up a construction of the building only for the business advantage, with the result the entire construction cost is admissible as the revenue expenditure.

4.5. The Apex Court in L.H.Sugar Factory and Oil Mills (P) Ltd. v. Commissioner of Income Tax [(1980) 125 ITR 293] held that the construction of roads in the case of Sugar Mill as revenue expenditure. Similarly, contribution to the State Housing Board for construction of tenements for the workers also held to be the revenue expenditure by the Apex Court in the case of Commissioner of Income Tax v. Bombay Dyeing and Manufacturing Co. Ltd. [(1996) 219 ITR 521].

4.6. Seeing through the pipelines of the above ratio in the facts and circumstances of the instant case, we do not see any substantial question of law as raised by the Tribunal, for our consideration, as the Explanation 1 to Section 32(1) of the Act is not attracted. Accordingly, these appeals are dismissed. Consequently, M.P.No.1 of 2007 is also dismissed.

kpl

Sd/

Asst.Registrar

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Sub Asst.Registrar

To

1. The Commissioner of Income Tax, Madurai

2. The Deputy Commissioner of Income Tax Company Circle I
Madurai 625 002.

3. The Assistant Registrar
Office of the Commissioner of Income Tax
Shastri Bhavan, Rajaji Bhavan
Rajaji Salai, Chennai

4. The Commissioner of Income tax (Appeals) I, Madurai

+ one cc to Ms. Pushya Sitaraman, Advocate sr no. 38831

GG(CO)
NM(19.07.07)

TC (A) No.876 & 877 of 2007.



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